

# MINUTES HEARING OFFICER JULY 1, 2014

Minutes of the regular public hearing of the Hearing Officer, of the City of Tempe, which was held at the Council Chambers, 31 East Fifth Street, Tempe, Arizona.

## Present:

Vanessa MacDonald, Hearing Officer Steve Abrahamson, Planning & Zoning Coordinator Sherri Lesser, Senior Planner Diana Kaminski, Senior Planner Steve Nagy, Administrative Assistant II

Number of Interested Citizens Present: 10

Meeting convened at 1:40 PM and was called to order by Ms. MacDonald. She noted that anyone wishing to appeal a decision made by the Hearing Officer would need to file a written appeal to that decision within fourteen (14) days, by July 15, 2014 at 3:00 PM, to the Community Development Department.

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1. Ms. MacDonald noted that the Hearing Officer Minutes for June 17, 2014 had been reviewed and approved.

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2. Request approval for a Use Permit to allow a tobacco retailer/Hookah Lounge for **DEVIL APPLE (PL140177)** located at 1219 S. McClintock Drive. The applicant is Mohamad Maleh, Hi-Life Smoke N' Lounge, LLC.

Diana Kaminski, Senior Planner presented the case by reviewing the site location and Use Permit details. She continued that staff has added 2 additional stipulations regarding the addition of a window as well as location of charcoal grill, making a total of 16 stipulations. Based on these stipulations, staff recommends approval subject

Ms. McDonald reviewed the stipulations, and asked the applicant to come up.

The applicant, Mohannad Maleh, Phoenix, AZ, indicated that there would be An overhead door where staff requested a window to be put in. Mr. Maleh also stated that the garage door would have glass paneling, and actually be bigger than the minimum required window size requested by staff.

Diana Kaminski added that there was no indication the garage door would have glass panels in the site plan provided by the applicant. Mr. Maleh agreed to submit plans that showed the garage door would have glass panels.

Mr. Maleh otherwise agreed with all of the conditions of approval, Ms. MacDonald noted that this request meets the criteria for a Use Permit:

- No significant increase in vehicular or pedestrian traffic.
- The proposed use is similar to others in the area and there should be no nuisances created from odor, dust, gas, noise vibration, smoke, heat or glare.

- The proposed use is not in conflict with the city's adopted plans or General Plan. There is no evidence that supports a downgrading of surrounding property values.
- The proposed use appears to be compatible with surrounding structures and uses.
- No disruptive behavior is generated by this use.

### DECISION:

Ms. MacDonald approved PL140177/ZUP14058 subject to the assigned Conditions of Approval:

- 1. This Use Permit is valid only after a Building Permit has been obtained and the required inspections have been completed and a Final Inspection has been passed.
- 2. The Use Permit is valid for the plans as submitted within this application. Any additions or modifications may be submitted for review during building plan check process.
- 3. If there are any complaints arising from the Use Permit that are verified by a consensus of the complaining party and the City Attorney's office, the Use Permit will be reviewed by City staff to determine the need for a public hearing to re-evaluate the appropriateness of the Use Permit, which may result in termination of the Use Permit.
- 4. Any intensification or expansion of use shall require a new Use Permit.
- 5. No outdoor live entertainment or outdoor speakers shall be allowed.
- 6. The applicant shall contact the City of Tempe Crime Prevention Unit for a security plan within 30 days of this approval. Contact 480-858-6409 before August 1, 2014.
- 7. Live entertainment requires a separate Use Permit.
- 8. An occupancy inspection and clearance from the Tempe Fire Department shall be obtained prior to the use permit becoming effective.
- 9. Hours of operation to end no later than 2 am on a daily basis.
- 10. All nonconforming building lighting shall be removed and replaced with compliant light fixtures. Details can be resolved during Building Safety Plan Review.
- 11. The property owner shall replace all dead or missing trees and landscape material and restore irrigation for ongoing maintenance of the landscape.
- 12. All rear exit doors require a lexan vision panel. Details to be approved through Building Safety Plan Review.
- 13. Provide bicycle parking racks per City of Tempe Public Works Department bicycle rack detail T-578 standard.
- 14. Provide a 6' masonry wall or steel picket fence on the south side of property, chain link is not allowed.
- 15. Provide a minimum of 16 square feet of fenestration on the north side of the suite, and at least one 16 square foot window on the south side of the suite. (ADDED BY THE HEARING OFFICER)
- 16. Work with staff on the location of the charcoal grill. (ADDED BY THE HEARING OFFICER)

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3. Request approval for a Variance to reduce the minimum lots size in the AG District from 1 acre to 0.99 and 0.98 acres consisting of two lots for **TONG RANCH (PL140151)**, located at 7016 East Warner Road. The applicant is Scott and Jian Tong.

Steve Abrahamson, Planning and Zoning Coordinator presented the case by reviewing the site location and clarifying the original lot size is 1.97 acre being divided into two 0.99 and 0.98 acre lots, not 1 acre being divided into two 0.99 and 0.98 acre lots as originally indicated.

Ms. McDonald reviewed the stipulations, and asked the applicant to come up.

The applicant, Scott Tong, Chandler, AZ, agreed with all of the conditions of approval. Mr. Small had nothing else to add.

Ms. MacDonald also invited up the applicant's builder, John Cochran, to confirm that both of the proposed buildings for the lots will fall within setbacks, which Mr. Cochran confirmed they would.

Ms. MacDonald noted that this request meets the criteria for a Variance Approval:

- That special circumstances are applicable to the property, including its size, shape, topography, location, or surroundings;
- The strict application of this Code will deprive such property of privileges enjoyed by other property of the same classification in the same zoning district;
- The adjustment authorized shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is located;
- A variance may not be granted if the special circumstances applicable to the property are self-imposed by the property owner.

# **DECISION:**

Ms. MacDonald approved PL140151/VAR14003 subject to the assigned Conditions of Approval:

- This Variance is valid only after completion of an approved and recorded subdivision plat for the proposed lots.
- 2. A final subdivision plat is required for this request, which shall be approved within one (1) year from the date of this approval, and shall match the lot size as provided in this decision.
- 3. Submit evidence of demolition or removal of the existing structure(s) in conflict with the setbacks for the new lots, prior to recordation of the subdivision plat.

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4. Request approval for a Use Permit to allow a private school in the R/O Residence Office District for A+ ACADEMY FOR EDUCATION AND DEVELOPMENT (PL140154) located at 7641 South Willow Drive. The applicant is Donald Newcomb.

Ms. MacDonald indicated that she would like to continue this case to the July 15<sup>th</sup> Hearing in order to provide the applicant with more time to provide more details on student pickup/drop-off traffic flow.

# DECISION:

Ms. MacDonald continued PL140154/ZUP14059 to the July 15, 2014 Hearing Officer meeting.

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5. Request approval for a Use Permit to allow a tobacco retailer/Hookah Lounge for **BLOW HOOKAH (PL140185)** located at 11 East 7<sup>th</sup> Street. The applicant is Amar Dalal.

Steve Abrahamson, Planning and Zoning Coordinator presented the case by reviewing the request, the site location and history of site. Mr. Abrahamson continued that staff would like to modify/add the following stipulations:

Modify stipulation #5 to include indoor/outdoor like entertainment, add stipulation #10 stating that applicant go through Development Plan Review Process for any exterior modifications, add stipulation #11stating applicant provide a suite map, and add stipulation #12 stating applicant work with staff to determine charcoal grill location.

Ms. McDonald reviewed the stipulations, and asked the applicant to come up.

Teresa Morris, representing Amar Dalal approached the podium. Ms. Morris reviewed the site plan and indicated that the applicant had decided not to pursue a patio at that time, thus there would be no possibility outdoor entertainment. Ms. Morris, Ms. MacDonald and staff discussed alcohol permitting details, use permit details and the stipulations.

Ms. MacDonald noted that this request meets the criteria for a Use Permit:

• No significant increase in vehicular or pedestrian traffic.

- The proposed use is similar to others in the area and there should be no nuisances created from odor, dust, gas, noise vibration, smoke, heat or glare.
- The proposed use is not in conflict with the city's adopted plans or General Plan. There is no evidence that supports a downgrading of surrounding property values.
- The proposed use appears to be compatible with surrounding structures and uses.
- No disruptive behavior is generated by this use.

### **DECISION:**

Ms. MacDonald approved PL140185/ZUP14060 subject to the assigned Conditions of Approval:

- 1. This Use Permit or Variance is valid only after a Building Permit has been obtained and the required inspections have been completed and a Final Inspection has been passed. .
- 2. The Use Permit is valid for the plans as submitted within this application. Any additions or modifications may be submitted for review during building plan check process.
- 3. If there are any complaints arising from the Use Permit that are verified by a consensus of the complaining party and the City Attorney's office, the Use Permit will be reviewed by City staff to determine the need for a public hearing to re-evaluate the appropriateness of the Use Permit, which may result in termination of the Use Permit.
- 4. Any intensification or expansion of use shall require a new Use Permit.
- 5. No <u>indoor or</u> outdoor live entertainment or outdoor speakers shall be allowed.
- 6. The applicant shall contact the City of Tempe Crime Prevention Unit for a security plan within 30 days of this approval. Contact Police Crime Prevention Staff at 480-350-8749 before August 1, 2014.
- 7. Use Permit for Tobacco Retail does not allow live entertainment live entertainment requires a separate Use Permit.
- 8. An occupancy inspection and clearance from the Tempe Fire Department shall be obtained prior to the use permit becoming effective.
- 9. Hours of operation are 11 am to 1:55am daily.
- 10. The applicant shall go through the Development Plan Review process for any exterior modifications.
- 11. Applicant to provide a suite map.
- 12. The applicant shall work with staff to determine charcoal grill location.

The next Hearing Officer public hearing will be held on July 15, 2014.

There being no further business the public hearing adjourned at 2:25 PM.

Prepared by: Steve Nagy, Administrative Assistant II

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Steve Abrahamson, Planning & Zoning Coordinator for Vanessa MacDonald, Hearing Officer

Reviewed by: